IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 673

MARTHA CARDONA,

Appellant,

against

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE and JOHN R. CREWS, Members of and constituting the Board of Elections of the City of New York,

Appellees,

and

LOUIS J. LEFKOWITZ, as Attorney General of the State of New York,

Intervenor-Appellee.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF FOR INTERVENOR-APPELLEE

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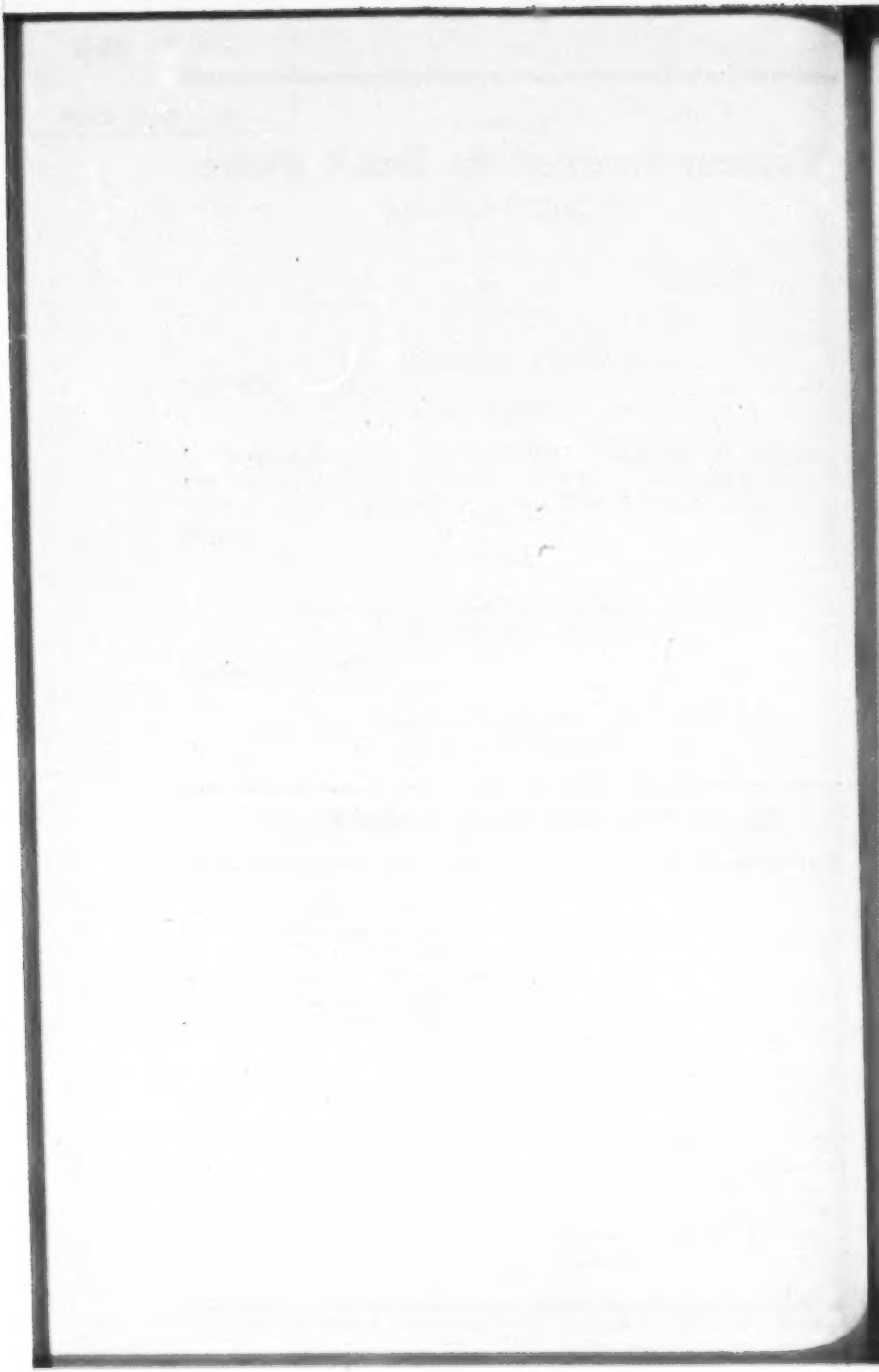

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IN THE

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MARTHA CARDONA,

Appellant,

against

JAMES M. POWER, THOMAS MALLEE, MAURICE J. O'ROURKE and JOHN R. CREWS, Members of and constituting the Board of Elections of the City of New York,

Appellees,

and

LOUIS J. LEFKOWITZ, as Attorney General of the [redacted] of New York,

Intervenor-Appellee.

BRIEF FOR INTERVENOR-APPELLEE

Preliminary Statement

Appellant challenges the constitutionality of the New York State Constitution and Election Law insofar as they provide that she must fulfill an English language literacy qualification in order to vote. She contends that alleged exceptions from the English literacy standard of certain

groups of which she is not a member void the provision; that, because she is a United States citizen, she is entitled to vote without taking such a test, and that the United States, by treaties and statutes extending citizenship to Puerto Ricans, and by its commitment to the United Nations, has precluded the establishment of an English literacy qualification for persons born in Puerto Rico.

On March 12, 1964, the New York Supreme Court, New York County (GREENBERG, J.), dismissed her application for an order that she be given a literacy test in Spanish or that she be enrolled as a voter without a test (R. 37-38). The New York Court of Appeals affirmed the decision by a vote of 4-3 on May 27, 1965 (R. 40-41). The remittitur was amended to show that questions under the Fifth, Fourteenth and Fifteenth Amendments to the Constitution had been passed upon (R. 44-45) and to show that questions under Article IV, §§ 2 and 4 and Article VI, § 2 of the Constitution had been passed upon (R. 46-47). This Court noted probable jurisdiction on January 24, 1966 (R. 52).

Opinions Below

The opinion of the Supreme Court, New York County (R. 37-38), is reported in the New York Law Journal, March 17, 1964, page 14, col. 5. The order of affirmance of the Court of Appeals is reported at 16 N. Y. 2d 639, 209 N. E. 2d 119, 261 N.Y.S. 2d 78 (R. 40). The dissent is also reported at 16 N. Y. 2d 639, 209 N. E. 2d 119, 261 N.Y.S. 2d 78 (R. 40-41). The first amendment to the remittitur is reported at 16 N. Y. 2d 708, 261 N.Y.S. 2d 900 (R. 44-45). The second amendment to the remittitur is reported at 16 N. Y. 2d 827, 263 N.Y.S. 2d 168 (R. 46-47).

Jurisdiction

Appellant has invoked the jurisdiction of the Court under 28 U.S.C. § 1257(2).

New York Law Involved

New York State Constitution, Article II, § 1 (Appellant's Appendix, p. 1a).

New York State Election Law, Sections 150, 155, 168 and 201 (Appellant's Appendix, pp. 1a-8a).

Questions Presented

1. Is New York State's provision that, in order to vote, its citizens must be able to read and write a minimal amount of English unreasonable within the meaning of the equal protection clause of the Fourteenth Amendment, although the provision embodies a permissible state policy, it is applied in a fair manner and it was not passed with a discriminatory purpose?

2. Is New York State's provision that, in order to vote, its citizens must be able to read and write English unreasonable as to appellant, a citizen of New York State, by virtue of her birth as a citizen of the United States or by virtue of her literacy in a language other than English?

3. Does New York State, in exempting from the English literacy voting qualification persons who became eligible to vote prior to the effective date of the qualification, and in providing that certain groups of citizens may, in lieu of taking an English literacy test, present other proof of such literacy, violate any right of appellant under the equal protection clause of the Fourteenth Amendment?

4. Can United States treaties and statutes relating only to the insular government of Puerto Rico abrogate the constitutional power of New York State to set reasonable voter qualifications for its own citizens?

Statement of the Case

According to her petition (R. 2-12), appellant Martha Cardona was born in Puerto Rico in 1923. She attended school there for an unspecified number of years and she alleges that the classes were taught in the Spanish language (R. 3). She further alleges that she has lived in New York City since 1948 and that she can read and write Spanish but cannot read and write sufficient English to pass the New York literacy test (R. 3, 4). On July 23, 1963, appellant appeared before the Board of Elections of the City of New York and presented proof of her age, citizenship and residence. Pursuant to statutory requirements, the Board of Elections requested that she take the Board of Regents literacy test.* She, however, demanded a test in Spanish. In the absence of such a test in the Spanish language, and in the face of her refusal even to *take* a test in English, the Board of Elections could not and did not enroll her as a voter (R. 3-4).

Appellant then commenced a proceeding in Supreme Court, New York County, pursuant to Article 78 of the New York Civil Practice Law and Rules, for an order directing the New York City Board of Elections to register her as a duly qualified voter or, in the alternative, directing the Board to administer to her a literacy test in the Spanish language and, upon her passing such a test, to register her as a duly qualified voter. She contended that those provisions of New York law which required her to demonstrate English literacy in order to vote were discriminatory and therefore unconstitutional. The contention was denied in the answer of the Attorney General (R. 17).

The application was denied and the petition dismissed on March 12, 1964 (GREENBERG, J.), on the authority of

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* The preparation of the English literacy test in New York is the responsibility of the Board of Regents and not the Board of Elections (Election Law, § 168 [1]).

Camacho v. *Doe*, 31 Misc. 2d 692, 221 N. Y. Supp. 2d 262 (Sup. Ct. Bronx Co. 1958), *aff'd* 7 N. Y. 2d 762, 163 N. E. 2d 140 (1959); *Camacho* v. *Rogers*, 199 F. Supp. 155 (S.D.N.Y. 1961) and *Lassiter* v. *Northampton County Board of Elections*, 360 U. S. 45 (1959). On direct appeal to the New York Court of Appeals, the decision was affirmed on May 27, 1965 (16 N. Y. 2d 639). The remittitur was amended to show that questions under the Fifth, Fourteenth and Fifteenth Amendments had been passed upon (16 N. Y. 2d 708) and to show that questions under Article IV, §§ 2 and 4, and Article VI, § 2, had been passed upon (16 N. Y. 2d 827).

The instant case arose before the passage of the Voting Rights Act of 1965. The petition does not allege facts which would bring appellant clearly within the scope of section 4(e) of that Act, although it does allege that she went to school in Puerto Rico, received instruction in Spanish and was literate in that language.* There was, of course, no occasion for the record to show that until the enactment of this provision of the Voting Rights Act.

The New York English Literacy Qualification

A. The Voting Qualification

The New York State English literacy qualification is embodied in Article II, § 1 of the New York State Constitution which provides, *inter alia*, that:

> "[A]fter January first, nineteen hundred twenty-two, no person shall become entitled to vote by attaining majority, by naturalization or otherwise, unless such

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* In appellant's brief in opposition to the motion to dismiss (p. 6), she emphasized this by stating: "Thirdly, there is nothing in the record before this Court to indicate that appellant could qualify under § 4(e) Voting Rights Act of 1965," but studiously refrained from asserting that she could not qualify under this provision of the Federal Act. We still suggest that the appeal may be moot as we did in our brief in support of motion to dismiss (p. 12).

person is also able, except for physical disability to read and write English."

Section 150 of the Election Law, which sets forth the voter qualifications for the State, provides *inter alia:*

"In the case of a person who became entitled to vote in the state by attaining majority, by naturalization or otherwise after January first, nineteen hundred twenty-two, such person must, in addition to the foregoing provisions, be able, except for physical disability, to read and write English. A 'new voter' within the meaning of this article, is a person, who, if he is entitled to vote in this state, shall have become so entitled on or after January first, nineteen hundred twenty-two, and who has not already voted at a general election in the state of New York after making proof of ability to read and write English, in the manner provided in section one hundred sixty-eight."

B. Proof of Literacy

Section 168 of the Election Law provides for the manner in which literacy may be proved. Under section 168(1) the State Board of Regents is to provide for the giving of literacy tests. In election districts requiring personal registration conclusive proof of literacy is established by "a certificate of literacy" issued to a voter under the rules and regulations of the Board of Regents. The certificate must show that the voter is able to read and write English except for physical disability and only to the extent of such disability. The certificates are to be accepted by election inspectors and central and veterans' absentee registration boards.

Section 168(1) provides further that "[l]iteracy tests may also be given by veterans' absentee registration boards to applicants for registration by such boards, except in cases where the signing of an application consti-

tutes conclusive proof of literacy as provided in section one hundred fifty-five of this chapter . . ."

Where personal registration is not required or where central or veterans' absentee registration boards have registered a voter, the election inspectors must issue a certificate of literacy to those fulfilling the same requirements as the certificate issued where personal registration is required.

Section 168 provides that proof of literacy may also be established by:

1. presentation of a certificate or diploma showing completion of the work "up to and including the sixth grade of an approved elementary school or of an approved higher school in which English is the language of instruction" (Election Law, § 168[2]);

2. presentation of a certificate or diploma showing completion of the work "up to and including the sixth grade in a public school or a private school accredited by the Commonwealth of Puerto Rico in which school instruction is carried on predominantly in the English language" (*id.*);

3. presentation of "a matriculation card issued by a college or university to a student then at such institution or a certificate or a letter signed by an official of the university or college certifying to such attendance" (*id.*);

4. affidavit attesting to the amount of education specified in (1), (2) or (3), *supra* and to the unavailability of the required documentary proof (*id.*);

5. naturalization as a United States citizen on or after June 27, 1952 "provided that the new voter was required to and did establish in the process of his naturalization, an understanding of the English language, including an ability to read and write and speak words in ordinary usage in the English language" (*id.*);

6. affidavit from the naturalized citizen that he acquired such an understanding of English if the election inspector is not satisfied that such an understanding was acquired in the naturalization process (*id.*);

7. a statement that he or she has previously voted a war ballot (Election Law, § 168[5]);

8. "presentation of a certificate of honorable discharge from any of the armed forces of the United States by a person who was a resident of the State of New York at the time he became a member of the armed forces" or by affidavit setting forth the facts of the honorable discharge and the unavailability of a certificate (Election Law, § 168[6]).

Section 168(3) of the Election Law provides that:

> "The inability of a voter, save for physical disability only, obvious to the election inspectors to write his name in a register or poll-book, shall be deemed conclusive proof of inability to read and write English, notwithstanding the presentation of proof of literacy as herein provided."

C. Related Provisions

In order not to disenfranchise persons who, but for their legitimate inability to appear at a designated time and place, would be entitled to register and vote, the State has provided for absentee registration and voting. Such provisions necessarily raise problems of the administration of the English literacy requirement.

Thus section 153-a of the Election Law provides for absentee registration by voters who are ill or physically disabled or whose duties, occupation or business require them to be outside the state. In instances where a person may register as an absentee voter "the spouse, parent or child of such voter, accompanying, being with such voter

and thereby unable to appear personally for registration" may also register as an absentee. Election Law, § 153-a (2),(3).

> "Upon receipt of such application [for absentee registration] if it appears that the applicant is a new voter and that he has not furnished proof of literacy as provided in section one hundred sixty-eight, the board of elections shall thereupon notify him of the need of producing such proof and shall furnish him with the necessary forms referred to in such section for execution and filing in lieu of producing the documents referred to in such section. The board shall also notify the board of regents of the state of New York in charge of the giving of literacy tests as required by such section and an arrangement shall be made for the giving of a literacy test to such applicant and for the issuance of a certificate of literacy under the rules and regulations of such board of regents." (Election Law. § 153-a[11]).

Section 155 of the Election Law provides for veterans' absentee registration. Under the provisions of that section an inmate or patient in a veterans bureau hospital may be registered by filling out and signing an application "from which may be determined his qualifications as a voter and the election district in which he resides." (Election Law, § 155[4]). "The signature of any new voter applying to be registered in the manner prescribed by the section shall constitute conclusive proof of his or her literacy" (Election Law, § 155[5]). Where physical disability prevents such signing, there may be administered "the oath prescribed by section one hundred sixty-nine" (Election Law, § 155[3]) and such oath "shall constitute conclusive proof of his or her literacy" (Election Law, §155[5]). The section also provides that spouses, parents and children of such inmates who are themselves hospitalized in such institutions or who are with hospitalized vet-

erans may register under the section "if otherwise lawfully entitled thereto" (Election Law, § 155[11]).

Under section 169 of the Election Law a person, other than a new voter, who appears to register and who will require assistance in order to vote either because of illiteracy or disability must take an oath that he will require such assistance giving the specific nature of his disability and, in the case of illiteracy, stating that he became entitled to vote in New York on or before January 1, 1922.

Summary of Argument

The states have the exclusive power to set voter qualifications, the only limitation being that those qualifications must be reasonable and non-discriminatory. *Harper* v. *Virginia State Board of Elections*, —— U. S. ——, 34 U.S.L. Week, 4305 (March 24, 1966); *South Carolina* v. *United States*, —— U. S. ——, 34 U.S.L. Week, 4207 (March 7, 1966). An English literacy qualification for voting is a reasonable exercise of the right to set voter qualifications. *Lassiter* v. *Northampton County Board of Elections*, 360 U. S. 45 (1959). This is especially true in New York where the ballot is long and complex. Moreover, an English literacy qualification insures that the voter can independently resolve the issues and understand the ballot without the aid of any intermediary, since English is the language in which all the business of the nation and state is conducted. The reasonableness of the requirement is evidenced by the test given in New York to determine literacy. The test, which is prepared by the Board of Regents, is a short and simple reading test requiring only enough writing to establish comprehension of the printed material. The reasonableness of the requirement is also evidenced by the fact that Congress requires English literacy for naturalization.

This reasonable literacy qualification does not become unreasonable when applied to appellant, a citizen of New

York. She is not a member of any class which is being subjected to discrimination. The fact that she learned to read Spanish does not create an obstacle to her learning enough English to pass the Board of Regents literacy test. Indeed, the opposite is true. In addition she may avail herself of the free adult education programs provided by the State. Appellant did not acquire the right to vote by virtue of her national citizenship. If this were true she would have been able to vote while in Puerto Rico in national elections. It was only when she became a resident of a state that she became even a potential voter in such elections, but she must, in order to obtain the franchise, fulfill the qualifications of her state. The fact that appellant is literate in a language other than English does not mean that New York must accept that literacy as an alternative to English literacy. Moreover, appellant is claiming a privilege accorded no other citizens or group of citizens. Nor does appellant have the great access to information about current affairs which she claims to have.

The history of the English literacy voting qualification demonstrates a concern to insure an informed electorate. The proposal at the Constitutional Convention of 1915 was a response to the growing problem of adult illiteracy and a negative reaction to a suggestion that the ballot be shortened so that the populace could understand it. It was in no way intended to discriminate against the immigrant or prevent any group from acquiring the franchise. The bill, as it was ultimately passed, was based on the same principles. From its inception the English literacy qualification for voting in New York has been complemented by programs for adult education, the first such being enacted in 1919.

The New York provision does not embody a grandfather clause since it provides only for a beginning date and omits a grandfather and lineal descendants. There are no exceptions to the English literacy qualification in

New York and in any event, exceptions would not automatically establish the unreasonableness of the qualification itself. Appellant's final reliance on treaties and statutes of the United States dealing with voting rights of persons in Puerto Rico to vote in Puerto Rico, have no extra-territorial effect and indeed, some were passed after appellant left Puerto Rico.

Appellant is not a citizen of Puerto Rico. She is a citizen of New York. She acquired no rights in Puerto Rico which entitle her to avoid New York's voter qualification of English literacy and she was burdened with no disability which prevents her from fulfilling that qualification like every other citizen of the state wherein she resides.

POINT I

The New York English literacy requirement is reasonable and does not deprive appellant of any right under the Equal Protection Clause of the Fourteenth Amendment to the Constitution.

Because the establishment of voter qualifications is the province of the states (U. S. Const. Art. 1 § 2; *Harper* v. *Virginia State Board of Elections*, —— U. S. ——, 34 U.S.L. Week 4305 [March 24, 1966]; *South Carolina* v. *United States*, —— U. S. ——, 34 U.S.L. Week 4207, 4213 [March 7, 1966]; *Carrington* v. *Rash*, 380 U. S. 89, 91 [1965]; *Lassiter* v. *Northampton County Board of Elections*, 360 U. S. 45, 50 [1959]; *Pope* v. *Williams*, 193 U. S. 621, 632 [1904]; *Minor* v. *Happersett*, 88 U. S. [21 Wall.] 162 [1875]), examination of the validity of State voting requirements, either by the Courts or by Congress, is confined to the question of whether "state voting qualifications or procedures . . . are discriminatory on their face or in practice" (*South Carolina* v. *United States*, *supra* at 4213), within the meaning of either the Fifteenth Amendment (see *e.g. Guinn* v. *United States*, 238 U. S. 347, 366

[1915] or the Equal Protection Clause of the Fourteenth Amendment (*Harper* v. *Virginia State Board of Elections supra; Carrington* v. *Rash, supra*).

A.

A literacy qualification as a prerequisite for voting has long and consistently been recognized as a legitimate exercise of a State's power to establish voter qualifications. The leading case is *Lassiter* v. *Northampton County Board of Elections*, 360 U. S. 45 (1959), but the power was recognized both before that case (*Guinn* v. *United States, supra* at 366) and since. *Harper* v. *Virginia, State Board of Elections, supra* at 4305; *Gray* v. *Sanders*, 372 U. S. 368 (1963); *Camacho* v. *Rogers*, 199 F. Supp. 155 (S.D.N.Y., 1961) (three-judge Court). As this Court said in upholding the English literacy requirement in *Lassiter* (360 U. S. at 51-53):

> "The ability to read and write likewise has some relation to standards designed to promote intelligent use of the ballot. Literacy and illiteracy are neutral on race, creed, color and sex, as reports around the world show. Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet in our society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise. Cf. *Franklin* v. *Harper*, 205 Ga. 779, 55 S. E. 2d 221, appeal dismissed 339 U. S. 946. It was said last century in Massachusetts that a literacy test was designed to insure an 'independent and intelligent' exercise of the right of suffrage. *Stone* v. *Smith*, 159 Mass. 413, 414, 34 N. E. 521. North Carolina agrees. We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by constitutional standards."

A literacy qualification in this country presupposes that it is to be an English qualification. In *Camacho* v. *Rogers*, *supra*, where the New York English literacy provision for voting was under attack, the three-judge Court held (199 F. Supp. at 159):

> "It is not unreasonable to expect a voter not only to be conversant with the issues presented for determination in choosing between candidates for election, but also to understand the language used in connection with voting. For example, there are presented in English on the ballot synopses of proposed constitutional amendments, titles of office to be filled and directives as to the use of the paper ballot or voting machine. Finally, what is more proper than that the voter be literate in the language used to conduct the business of government in his state."

Confronting the ballot in New York without a knowledge of English is virtually impossible. Indeed, the English literacy qualification was initially proposed in lieu of a shortened ballot (3 Rev. Rec. N. Y. State Const. Conv. of 1915, p. 3001). In 1964, when most of the offices to be filled were federal, the ballots for New York County bore the titles of candidates for 7 offices on 6 party tickets and synopses of 2 proposed amendments to the State Constitution and of 1 proposition. A copy of such a ballot is annexed to this brief as Appendix A. In 1965, when all of the offices to be filled were state and local, a typical ballot in New York County bore the titles of candidates for 12 offices on 9 party tickets and synopses of 9 proposed amendments to the State Constitution, of 3 propositions and of 1 question. A copy of such a ballot is annexed to the brief as Appendix B.

A person who is not English literate cannot confront such a ballot without the aid of some intermediary. Yet it is one of the basic safeguards of the democratic process that there be an independent electorate (see *Lassiter* v.

Northampton County Board of Elections, supra) and that no voter be dependent on any other person to tell him what the issues are or what the ballot says (3 Rev. Rec. *supra*, p. 3161). It cannot be denied that even if we are a culturally diverse nation and state, we have one language for official affairs. All national and state business is conducted in English. From the ballot to the income tax to the driver's license most of us meet our government only on paper and that paper is always in English.

That the English literacy requirement in New York is "designed to promote intelligent use of the ballot" (*Lassiter* v. *Northampton County Board of Elections, supra* at 51), and not to prevent use of the ballot by appellant or any other citizen, is clear from the New York Board of Regents literacy test. There has never been any question that the test is "fair on its face" *Harper* v. *Virginia State Board of Elections, supra* at 4305. See *Lassiter* v. *Northampton County Board of Elections, supra* at 52 n. 7; *Camacho* v. *Rogers, supra* at 159; 31 Notre Dame Lawyer 257-58 (1956).* An example of a literacy test is annexed hereto as Appendix C. The preparation and administration of the test are the responsibility of the State Board of Regents and not of the various Boards of Election. New York Election Law, § 168 (1). The test has been described in McGovney, The American Suffrage Medley (1949), pp. 63-64:

> "The examination is based upon prose compositions of about ten lines each, prepared by the personnel of the State Department of Education, designed to be of the level of reading in the sixth grade, on topics of civics, history, geography, natural science or biography. These are uniform for any single examination throughout the State. The examination is given by school authorities and graded by school superintendents or

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* The fairness of the New York test has previously been acknowledged by the United States Department of Justice appearing as *amicus curiae* in *Camacho* v. *Rogers, supra*. See appendix to appellee's motion to dismiss or affirm in the instant case.

> teachers under careful instructions from the central authority, to secure uniformity of grading as nearly as is possible. On a form handed a person taking the examination the eight to ten line composition is printed, followed by eight questions, with blanks for answers. The questions call for short answers which can easily be given by anyone able to read the composition understandably. No additional information is necessary. There is no insistence upon good English in the answers, errors of spelling and of grammar being overlooked."

The test is basically a reading test requiring only enough writing to establish comprehension of the printed material. The answers may even be copied directly from the text. Aside from the statutory requirement that a prospective voter be able to read and write, a written test insures fairness and uniformity in grading which an oral test would not. The test, like the requirement from which it derives, merely assures that the citizen of New York has the minimum English literacy necessary to enable him to deal with his government, to acquire the information necessary to a responsible citizen and to confront the ballot by himself.

Congress itself has recognized that English literacy, as opposed to literacy in any other language, bears an important relation to good citizenship. The present naturalization law provides that "no person may be naturalized as a citizen of the United States upon his own petition who cannot read, write and speak words in ordinary usage in the English language, if physically able to do so" (8 U.S.C. § 1423). This section is merely a continuation of a national policy which has been in effect since 1917 and which applies even to persons seeking to be naturalized in Puerto Rico. The present section was continued in the 1952 revision of the immigration law:

> "In order that he [the alien] may intelligently use this fundamental and uniform knowledge [of our political

and social structure] and so that he may be a complete and thoroughly integrated member of our American society, the committee feels that he should have a basic knowledge of the common language of the country and be able to read, write and speak it with reasonable facility." U. S. Code Cong. & Admin. News, 82nd Cong. 2nd Sess. (1952), p. 1736.

Surely, if Congress can require English literacy as a prerequisite to citizenship, the States may require English literacy as a prerequisite to the exercise of one of the most important functions of state and national citizenship, the right to vote.

Indeed Congress has accepted the power of the state to establish an English literacy qualification for prospective voters. In passing Section 4(e) of the Voting Rights Act of 1965, the subject of the appeals in Nos. 847 and 877, Congress left intact the New York English literacy requirement for persons who cannot show six grades of education, and any suggestion that the State applies its requirement in a discriminatory manner was emphatically rejected by Senator Javits of New York, a co-sponsor of the measure. 111 Cong. Rec. 10681 (daily ed. May 20, 1965).

B.

The English literacy qualification, which is reasonable on its face, and which is applied equally and impartially to all citizens of New York, does not become unreasonable when applied to appellant. She attempts to establish that she is a member of a class which is the victim of unreasonable discrimination within the meaning of either the Fifteenth Amendment or the equal protection clause of the Fourteenth Amendment. Yet she does not claim that all persons of Puerto Rican origin are without the right to vote in New York. See New York Election Law, § 168(2). The only persons of Puerto Rican origin who may not vote are those who, like any other citizens, cannot meet the

State's voting qualifications. The mere fact that some persons who cannot meet the English literacy qualification may be of Puerto Rican origin, and this is by no means established,* constitutes no basis for claiming discrimination. *Cf. Wright* v. *Rockefeller*, 376 U. S. 52, 58 (1964).

Appellant attempts to establish that she is the victim of an unreasonable voting qualification by the startling proposition that "non-literacy in the English language is an inherent quality of United States citizens of Puerto Rican birth, as much as is the quality of their skin color, their culture, their 'race' or their physical characteristics" (Br. pp. 17-18). The inability to learn is not an inherent quality of any group of citizens or non-citizens. Indeed, it is frivolous to assert that no person born in Puerto Rico and educated in Spanish has been able to learn English. The experience of New York has been different. One of the reasons the State has been able to weld together its once disparate elements is the well-known fact that to a person literate in one language it is not a great burden to acquire minimal literacy in another language. As we have seen, the nature of the New York English literacy test is such that a person literate in another language should be able to pass it without difficulty after fulfilling the one year residence required of everybody in order to vote. In fact, it is in no way conceded that appellant, who has lived in New York for sixteen years and who has three children, all born in New York, could not have passed the literacy test which she refused to take. New York, more-

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* The contention that a large number of citizens born in Puerto Rico are being disenfranchised by the English literacy requirement in New York, appears, from available statistics, to be unfounded. Section 4 (e) of the Voting Rights Act of 1965 was in effect in New York during the period preceding the 1965 election. Yet only 8107 persons registered to vote in New York City under the Act. New York Times, November 16, 1965, page 38. Of those so registering, some must have been new voters who would have been able to pass an English literacy test.

over, provides an extensive free adult education program and thus provides every citizen the means of qualifying to vote.

Appellant further insists that English literacy is not a qualification which may be exacted of her because the right to vote inheres in her by virtue of her national citizenship. This Court has held that the right to vote is not one of the privileges or immunities of citizenship. *Minor* v. *Happersett*, 88 U. S. [21 Wall.] 162 (1875). If the right to vote were such a privilege or immunity, then, presumably, appellant would have had the right to vote in national elections even when she resided in Puerto Rico. She had no such right. She was able to vote only in insular elections having met the voting qualifications established by the insular government. Although the right to vote in federal elections is guaranteed by the Constitution, it is an incident of state citizenship and the right to vote depends on fulfilling reasonable state voter qualifications. U. S. Const., Art. I, § 2.

C.

Conceding, apparently, that the provision of literacy for voting is a valid state qualification, appellant argues that her Spanish literacy is an alternative to English that the State is constitutionally required to accept. She thus claims a privilege accorded to no other citizen literate in a language other than English. For the reasons we have stated in part "A", *supra*, literacy in any other language is simply not the equivalent of English literacy. Appellant relies heavily on the assertion that the education and access to information of persons born in Puerto Rico and literate in Spanish make English an unreasonable voting qualification as to them. The availability of material in another language does not make the qualification of English literacy unreasonable. Moreover, Spanish speaking persons do not have great access to materials which will help them vote intelligently. According to the Record

before this Court in Nos. 847, 877, the only Spanish language media in the State are in New York City. These include three Spanish language dailies "El Diario-La Prensa" with an approximate circulation of 75,000 per day (Record in Nos. 847, 877, p. 52), "El Mundo Americano" with an approximate circulation of 10,000 per day (*id.* at 50) and "El Tiempo" which recently expanded from a weekly to a daily publication (*id.* at 50). In 1960 there were 642,622 persons of Puerto Rican birth or ancestry in New York State (United States Census, 1960; Table 6). Of these, 612,574 resided in New York City (*id.*). The record does not indicate what, if any, the circulation of Spanish language publications is outside New York City. Again, although there is one Spanish language radio station in New York City, there is no indication of access to such an outlet outside the City. The record is, moreover, devoid of any allegation that coverage extends to all candidates and issues within the State in which a Spanish-literate person would be interested and is similarly devoid of any allegation that copies of the ballot are translated into Spanish and published. Appellant's heavy reliance on the pervasiveness of radio and television in the modern world overlooks the fact that by far the greater portion of such broadcasts is in English. Appellant does not allege that she can understand oral English.

In addition, education outside the state does not give a person the requisite local experience necessary for intelligent exercise of the ballot and the fact that a citizen has voted before in another jurisdiction does not mean that the state to which he removes may not establish other reasonable qualifications, such as residence, for voting in that state. See *e.g.*, *Drueding* v. *Devlin*, 234 F. Supp. 721 (D. Md. 1964), *aff'd* 380 U. S. 125 (1965). If education was not in the English language, access to local material and to current debates even on national issues is just that much more difficult.

POINT II

The history of the New York English literacy qualification, passed concurrently with programs for adult education, demonstrates that its purpose was to insure an intelligent electorate and not to discriminate against any group of citizens.

The history of the New York English literacy qualification for voting demonstrates that the State was concerned with assuring an electorate capable of intelligent exercise of its responsibilities. An English literacy qualification was proposed in New York as early as 1846. There was, however, no full debate on the question until the Constitutional Convention of 1915. At that time Mr. Charles H. Young of Westchester proposed an amendment requiring that "after January First, One Thousand, nine hundred and eighteen, no person shall become entitled to vote by attaining a majority, by naturalization or otherwise unless such person is also able, except for physical disability, to read and write English. Suitable laws shall be passed by the Legislature to enforce this provision". 3 Rev. Rec. N. Y. State Const. Conv. of 1915, p. 2999. In support of his amendment Mr. Young pointed out that 18 other States had a similar provision but that in none of those States had the effective date of the statute been postponed in order to give the people an opportunity to learn English (*id.*). Mr. Young further said:

> "We should try to educate the voter. In early pioneer days a literacy test would have worked a real injury to our free and independent government when very many pioneers and immigrants of strong character and great native ability had no advantages of schooling. But this is no longer so. Educational advantages are to-day open. Everyone with a desire or knowledge and original energy and ability, anyone can secure such education as will permit him to read and write

English, and this is particularly true of those who can already read or write their own language before they land upon our shores."

• • •

"Since the Convention of 1894, the flood of immigration to this country has increased beyond the belief, and, so far as this State is concerned, adult illiteracy has grown with the increase of population. Since that time the Courts have also taken to restrict immigration with a literacy qualification. Very properly President Taft vetoed the legislation. It would be manifestly absurd to keep any man out of the United States because of his lack of knowledge of our institutions. . . ." (*Id.* at 3000-3001).

Mr. Young disagreed with shortening the ballot, a proposal which had been made on the ground that the voters had insufficient knowledge of candidates' qualifications. He said that it was better to educate the voter than to shorten the ballot: "We have wilfully opened the gate to foreign born citizens. We have welcomed them with open arms. They have been absolutely necessary to the advancement of our civilization. We have furnished them with free education, day and night, as no other country has" (*id*). The test was urged not as a panacea, merely as an attempt to help those not yet enfranchised to exercise that franchise with intelligence (*id.* at 3002). He emphasized that "my proposition disfranchises nobody now having the right to vote. It has not attempted to do away with what exists. It is only a concern to provide for the future" (*id.* at 3003).

In the ensuing debate in the Convention, Mr. Young was joined by some whose purpose in supporting the amendment was certainly based on notions of racial superiority—notably the oft-quoted Mr. Gordon Knox Bell (*id.* at 3015-17)—although expressions of racial superiority were not confined to the Amendment's supporters (*id.* at 3043). The greater

part of the debate, however, had none of the bigoted character attributed to it by the brief *amicus curiae*. Those who supported the amendment did so because "[t]he whole fabric of our present political selection depends upon an intelligent and literate constituency" (*id.* at 3161).

In 1917 Senator Brown, Majority Leader of the State Senate, reintroduced the literacy requirement into the New York State Legislature. Once again the proposal had a deferred date so that those interested in learning English before its effective date could do so and once again it did not disenfranchise any voters who had previously acquired the right to vote. Senator Brown said that he did approve of the federal literacy test for immigrants which had recently been enacted, but he introduced his bill in the hope that "foreigners desirous of becoming citizens would study and learn the English language". New York Times, January 11, 1917 page 9, col. 5.

In 1919 the bill again passed the Legislature and in 1921 the proposed constitutional amendment was submitted to the People. It was carried and became part of Article II, §1 of the New York State Constitution.*

From its inception the English literacy requirement for voting in New York has been complemented by programs for adult education. Far from seeking, in an air laden with prejudice and bigotry, forever to disenfranchise the immigrant, the same legislature which passed the English

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* In the public debates preceding the 1921 election, the amendment was supported by, among others, the Citizens Union (New York Times, October 17, 1921, p. 27, col. 3). The Union sent to its members materials setting forth both sides of the issue. In favor of the amendment it was argued, *inter alia*, that voters would have access to ideas not otherwise available, that voting was a qualified right with reciprocal obligations and that no serious abuse in administration as a result of racial prejudice could be expected. Against the bill it was argued that it was an insufficient test of political capacity, that it could not be fairly administered and that, by excluding certain groups from voting, it would sharpen racial disagreements (New York Times, May 10, 1921, p. 36, col. 2).

literacy test concerned themselves with wiping out adult illiteracy. In 1917 Governor Whitman said:

> "During the period 1900-1910 the percentage of child illiteracy in the state was reduced by 45% but so great was the immigration of illiterate adults during that same period that the total average percentage of illiteracy was not diminished, though in all other states except one there was a reduction in this percentage. There are at present more than 360,000 illiterates in the state over fifteen years of age. These figures indicate that if illiteracy is to be eliminated in the state, some state wide provision must be made to reach the adult immigrant through educational facilities . . . Every argument for training a child into a knowledge of the language of America and of the obligations of citizenship is equally potent for the alien who comes after the schoolage but who wishes to become a worthy American citizen." *Public Papers of Governor Charles S. Whitman* (1917). Annual Message—Adult Illiteracy, pp. 66-67.

In 1919 Governor Alfred E. Smith signed the Sage Immigrant Education Bill authorizing a $100,000 expenditure and organizing instruction of illiterate and non-English classes and home teaching. The aim of the bill was "to obliterate adult illiteracy from the State . . . [t]here are about 600,000 persons in the State who are unable to speak English and . . . are upwards of 350,000 who are not only unable to read and write English but are unable to read or write any language." *Public Papers of Governor Alfred E. Smith* (1919) pp. 280-281. It was to be a further function of the new bill to promote the taking out of papers for citizenship, New York Times, May 25, 1919, Sec. II, p. 2, col. 2. In the same year, in his annual message on education, Governor Smith said:

> "The industrial efficiency, the economic soundness and the civic righteousness of the state, very largely de-

> pend upon our educational system. Ignorance is the greatest ally of poor citizenship. It should be our objective that no person in this State who can be under our influence should be without the ability to read and write, or without a clear conception of our American institutions and ideals." *Public Papers of Governor Alfred E. Smith* (1919) p. 32.

Another problem which beset New York at the time the literacy requirement was imposed was the increased pressure on the ballot created by women's suffrage. The Nineteenth Amendment was ratified in 1920 and had been foreseen in the Constitutional Convention 1915. 3 Rev. Rec. N. Y. State Const. Conv. (1915), p. 3005. The problem of illiteracy especially as it related to citizenship was recognized as a serious one for the state. The solutions were neither unreasonable nor burdensome. The need to learn English was one the immigrant understood and a task he embarked on joyously.*

The relationship between citizenship and literacy had its logical culmination in the placing in the hands of the Board of Regents the task of devising and administering the new requirement.

> "The experiment is a novel one in its attempt definitely to connect up the school authorities with the qualifications for voting. The Americanization movement in New York State has furnished aliens the opportunity to learn English when applying for citizenship and an equal chance to comply with the state educational qualification for voting." 17 American Political Science Review 260, 263 (1923).

It is obvious from the history of the English literacy requirement that it was not aimed at disenfranchising New York's Spanish speaking population. In 1920 there were

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* See *Rosten, The Education of *H*Y*M*A*N*K*A*P*L*A*N.*

only 7,719 Puerto Rican born citizens in New York of a total State population of 10,385,227 (United States Census, 1960). *Moreover, in 1920 English was the dominant language being taught in the schools of Puerto Rico after the fourth grade* (Br. *amicus curiae* of the Commonwealth of Puerto Rico in Nos. 847, 877, p. 12; *United States* v. *County Board of Elections*, 248 F. Supp. 319 (W.D.N.Y. 1965), *appeal dismissed* —— U. S. ——, 34 U.S.L. Week 3319 [March 21, 1966]).*

POINT III

The New York English literacy requirement is not rendered invalid by the fact that it becomes effective on a certain date or by the fact that certain groups of citizens may prove their literacy by means other than taking a test.

A. The New York statute does not contain a grandfather clause.

Appellant contends that the New York law is in effect a "grandfather clause" because it applies only to persons who became eligible to vote after January 1, 1922. The argument omits one crucial element, *viz.*, a grandfather. In *Guinn* v. *United States*, 238 U. S. 347 (1915), this Court held violative of the Fifteenth Amendment a statute providing that:

> "No person shall be registered as an elector of this State or be allowed to vote in any election herein, unless he be able to read and write any section of the constitution of the State of Oklahoma; but no person who was, on January 1, 1866, or at any time prior

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* In 1916, Spanish was substituted for English as the medium of instruction in Puerto Rico for grades 1-4. In 1930, it became the language of instruction in the first through eighth grades and in 1947, Spanish was established as the medium of instruction for all grades. *United States* v. *County Board of Elections, supra* at 319.

thereto, entitled to vote under any form of government, or who at that time resided in some foreign nation, and no lineal descendant of such person, shall be denied the right to register and vote because of his inability to read and write sections of such constitution." (*Guinn* v. *United States, supra* at 357.)

The statute, which took effect in 1906, chose a cutoff date forty years earlier (the date of the first Civil Rights Law) and exempted not only those entitled to vote at that time but even foreigners not resident in the United States and their lineal descendants. The only purpose and effect of the provision was to prevent Negroes from voting. By contrast, the New York law was given an effective date solely to prevent disenfranchisement of any person (see p. 22, *supra*). It applied only to those individuals who became eligible to vote after its effective date, the point of beginning and grants no rights to lineal descendants. *Sperry & Hutchinson* v. *Rhodes*, 220 U. S. 502, 505 (1911). While a grandfather clause operates in perpetuity to exempt an ever-growing number from a literacy test, a provision such as New York's operates solely to permit an ever-dwindling group (forty-five years have passed since the adoption of the constitutional provision for literacy) to exercise the franchise to which they were entitled when the law was changed.

The New York Law was passed at a time when the great wave of migration from Europe was over and migration from Puerto Rico had not yet begun nor was in reasonable prospect. It cannot be said, therefore, that its intent was discriminatory. Moreover, the federal law requiring literacy for naturalization similarly does not apply to persons who, on the effective date of the statute, were over forty years of age and had resided in the United States for periods totalling at least twenty years. 8 U.S.C. § 1423. *Cf. United States* v. *Dorto*, 5 F. 2d 596 (1st Cir. 1925) (construing the Cable Act, 42 Stat. 1021). *Amicus*

curiae concedes that a cutoff date might be acceptable were it not for the fact that the State exempted from the literacy requirement persons who become eligible to vote on or before January 1, 1922 even if they had not actually voted at that time (Br. p. 39). Reliance is placed on dictum in *Matter of Ferayorni* v. *Walter*, 121 Misc. 602, 202 N. Y. Supp. 91 (Sup. Ct. Queens Co. 1923). Even if that interpretation be taken as authoritative it is hardly the broad exception claimed and contributes no substance to the argument that the establishment of an effective date had a discriminatory purpose. Moreover, the invalidity of a cutoff date would have no effect on the validity of an English language requirement. *Lassiter* v. *Northampton County Board of Elections*, 360 U. S. 45 (1959).

B. The provisions of the Election Law relating to groups of which appellant is not a member, do not invalidate the New York English literacy requirement.

Appellant claims that there are numerous exceptions to the English literacy qualification in New York and that these exceptions infect the entire law. Appellant has no standing to challenge the validity of such "exceptions" in and of themselves. See *South Carolina* v. *United States*, —— U. S. ——, 34 U.S.L. Week 4207, 4211 (March 7, 1966); *United States* v. *Raines*, 362 U. S. 17, 20-24 (1960); *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449 (1958); *Barrows* v. *Jackson*, 346 U. S. 249 (1953). Again, the invalidity of any "exceptions" would have not affected the validity of the separable English literacy requirement, the only issue appellant has standing to raise.

Any "exceptions", therefore, are relevant only insofar as they may be some evidence that the literacy requirement is being applied in a manner which unreasonably discriminates against any non-excepted groups. Even then the issue is not concluded. Thus, for example, if there were an exception from the literacy requirement for physically disabled persons, and if that exception were held

to have no reasonable basis, the fact that there was an unreasonable exception to the law would not conclusively establish that the requirement itself was unreasonable. In fact, to the extent that appellant may be considered a member of a group it has already been demonstrated that an English literacy requirement is reasonable as to her.

Moreover, the arguments with respect to alleged exceptions to the English literacy qualification in New York are untenable. Appellant claims that the physically disabled may vote despite illiteracy. Even if this were true, it would be a reasonable classification within the meaning of the Fourteenth Amendment. See 8 U.S.C. § 1423. Actually, however, the Legislature clearly contemplated that physically disabled persons should comply with the English literacy qualification since Election Law, § 168(1) provides that a certificate of literacy must be "to the effect that the voter to whom such certificate is issued is able to read and write English . . . *save for physical disability only, and to the extent of such physical disability which shall be stated in the certificate* . . ." (Emphasis supplied). Accordingly, the Board of Regents has adopted rules which provide:

> "*Evidence of literacy:* Certificates of literacy shall be issued as follows:
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> • • •
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> 2. To applicants who because of physical disability are unable to pass the New York State Regents literacy test but who can satisfy the examiner that they could pass the test if it were not for such disability . . ." 8 N. Y. Codes, Rules and Regulations, Chap. I § 22.3.

Appellant also states that there is an exception from the literacy qualification for honorably discharged veterans. Election Law, § 168(6) provides that proof of literacy may be established by presentation of a certificate of honorable discharge by a person who resided in New York at the time of his induction. The amendment, which was added to the Law in 1952, was opposed by the State Education Depart-

ment because it felt that an Army discharge was no assurance of literacy. N. Y. Legislative Annual (1952) p. 167. However the legislature, which is presumed to have investigated the relevant facts (*Ferguson* v. *Skrupa*, 372 U. S. 726 [1963]; *Two Guys* v. *McGinley*, 366 U. S. 582, 591 [1961]; *Carolene Products* v. *United States*, 323 U. S. 18 [1944]), disagreed.

In fact, English literacy is a prerequisite for induction into the Armed Forces of the United States. A potential inductee must pass certain qualifying tests. 50 App. U.S.C. § 454 (a). The written tests are administered only in English. A[rmy] R[egulations] 601-270 par. 60 (b) provides that if a non-English speaking registrant has failed the qualifying test he may be retested, but only once (AR 601-270 pars. 60[b][1], [2], 63[b]). Failure to pass the qualifying test means that "the registrant will be rejected as not qualified for military service even during war or national emergency" (AR 601-270 par. 59 [b][2]). English literacy is even required of inductees from Puerto Rico. A preliminary examination is given in English or Spanish, but if the Spanish examination is taken and passed, the registrant must take and pass an English reading test. AR 601-270 App. XX pars. 1, 3(a)(3),(4).

Appellant also attacks New York's provisions for absentee registration of inmates of veterans' hospitals and spouses, parents or children who may be with them. As to such persons, their signature on the form provided is "conclusive proof of literacy." Election Law § 155(5) (12[d]). If, for reasons of physical disability, a prospective voter is unable to sign the form, he may take the oath provided for in Election Law § 169. Election Law § 155(3). The form provided for such inmates and their relatives must contain facts from which may be determined [their] qualifications as voter[s]" (Election Law § 155[4]) and includes space for the presentation of proof of literacy. The oath to be taken by those who cannot sign is precisely the oath taken by every other disabled person. Election

Law § 169. Moreover, the legislature regards the ability to sign one's name as at least some proof of literacy. Election Law § 168(3).

Although it is clear that § 155 does not constitute an exception to the literacy requirement, if it were such an exception it would be reasonable. Military service is blind to race, creed, color or national origin. Citizens from every part of the United States serve in the armed forces and receive treatment in veterans' hospitals. It cannot seriously be contested that every effort should be made not to disenfranchise inmates of veterans' hospitals. Yet such persons present serious problems with respect to the administration of a literacy test since they cannot appear to take a test. If it is expected that the applicant will, by election time, be able to appear, he may not avail himself of the provision. Election Law § 155(4). Even without additional supporting facts, certain differentiations between veterans and civilians have long been deemed proper. See, e.g., 5 U.S.C. §§ 851 *ff*. (preferences to veterans in Government employment); 8 U.S.C. §§ 1439, 1440 (accelerated naturalization through service in the armed forces); *Hilton* v. *Sullivan*, 334 U. S. 323, 336-38 (1948). Any argument, then, that the New York literacy law must give way under the weight of alleged "exceptions" amounting to a denial of equal protection under the Fourteenth Amendment is entirely without substance. Even if any of the above be regarded as "exceptions" to the New York English literacy qualification for voting, they are not such exceptions as amount to a violation of the Fourteenth Amendment. As this Court has held:

> "[A] State can, consistently with the Fourteenth Amendment, provide for *differences* so long as the result does not amount to a denial of due process or an 'invidious discrimination.' *Williamson* v. *Lee Optical Co.*, 348 U. S. 483, 489, *Griffin* v. *Illinois*, [351 U. S. 12] p. 18. *Absolute equality is not required;* lines can

be drawn and we often sustain them." *Douglas* v. *California*, 372 U. S. 353, 356-57 (1963) (emphasis supplied).

See also *Matter of Gianatasio* v. *Kaplan*, 142 Misc. 611 (Sup. Ct. N. Y. Co.), *aff'd* 257 N. Y. 531, *appeal dismissed* 284 U. S. 595 (1931).

None of the "exceptions" alleged establishes any invidious discrimination as to appellant. Moreover, there is no showing by appellant that any of the alleged exceptions is of any substantial numerical significance.

POINT IV

No statute or treaty of the United States voids the applicability to appellant of New York's requirement that prospective voters be able to read and write English.

Appellant maintains that certain laws and treaties of the United States with respect to Puerto Rico forbid New York to impose an English literacy requirement for voting on residents of New York born in Puerto Rico. Reliance on these statutes, particularly the Treaty of Paris of 1898 (30 Stat. 1754), and the Jones Act of 1917 (39 Stat. 951), and on the Constitution of Puerto Rico is entirely misplaced. Those laws have applicability only in Puerto Rico itself and not on the mainland. As the Court said in *Camacho* v. *Rogers*, 199 F. Supp. 155, 158 (S.D.N.Y. 1961):

> "We think it is clear that this provision [in the Treaty of Paris] applies only to the rights of persons born in and *resident of* Puerto Rico, and that they are not given rights which they are entitled to exercise in contravention of the valid laws of a state to which they may move from Puerto Rico. They do not acquire a special status which would give them pref-

erential treatment over a resident of a sister state who moves to New York and seeks to vote from her new residence." (Emphasis supplied)

Appellant is neither a resident nor a citizen of Puerto Rico. She is a citizen of New York, the State wherein she resides. U. S. Const. Amendment XIV, § 1. Laws relating to the government of Puerto Rico attached no mantle to appellant which followed her to New York. Indeed some of the laws on which she relies, notably the United Nations Participation Act and the Constitution of Puerto Rico, became effective *after* appellant left Puerto Rico and became a citizen of New York.

Appellant cannot invoke the treaty power in support of a claim that she need not comply with the voting qualifications of her state of residence. It is the states and not Congress which set voting qualifications. In fact, no statute or treaty relied on gave appellant the right to vote in federal elections in Puerto Rico. Therefore, they could not have been intended to confer that right on her as a resident of a State. The power of Congress to establish or concur in such qualifications for residents of Puerto Rico to vote in Puerto Rico does not give any such rights to persons who leave Puerto Rico. Whether or not the power of Congress to make treaties may be somewhat broader than its legislative power (*Missouri* v. *Holland*, 252 U. S. 416 [1920]), it "does not extend so far as to authorize what the constitution forbids." *DeGeofroy* v. *Riggs*, 133 U. S. 258 (1890). The decision of Puerto Rico to educate its citizens in Spanish must have been made with the understanding that it would limit the ability of those citizens fully to participate in the life of any other part of the United States. The decision, based on justifiable internal concerns, cannot be held to invalidate pre-existing, equally justifiable internal policies of any State. What Congress cannot effect

directly, the establishment of State voter qualifications, it cannot effect indirectly, by concurring in the educational policies of Puerto Rico.

Finally, those provisions of the United Nations Charter abjuring distinctions based on "race, sex, language or religion" (Preamble, Article 55) are not self-executing (*Hitai* v. *Immigration and Naturalization Service*, 343 F. 2d 466 [2d Cir. 1965]); *Camacho* v. *Rogers*, *supra* at 158; *cf. Sei Fujii* v. *State*, 38 Cal. 2d 718, 242 P. 2d 617 [1952]), even assuming that a simple literacy test fairly administered and reasonably related to intelligent implementation of the democratic process is that sort of practice envisioned by the Charter.

CONCLUSION

For the foregoing reasons, the judgment of the Court of Appeals of the State of New York should be affirmed.

Dated: New York, New York, April 6, 1966.

Respectfully submitted,

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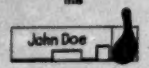
APPENDIX

DIRECTIONS FOR VOTING ON THE VOTING MACHINE

PULL the red handle of the curtain lever (lower left side of the machine) from the left to right as far as it will go and leave it there (this will close the curtain around you and unlock the machine for voting).

On the ballot shown at the right you will find (in column A, column B, column C, etc.) the names of the candidates. Turn down the pointer at the right of the candidate or candidates you wish to vote for until an ☒ mark appears at the right of each candidate's name for whom you intend to vote, and leave the ☒ mark showing, from

this



to this

Leaving the pointer or pointers down in their voting position, pull the red handle of the curtain lever to the left as far as it will go and leave it there (this will register your vote and return the pointers to their first position, after which the curtain will open).

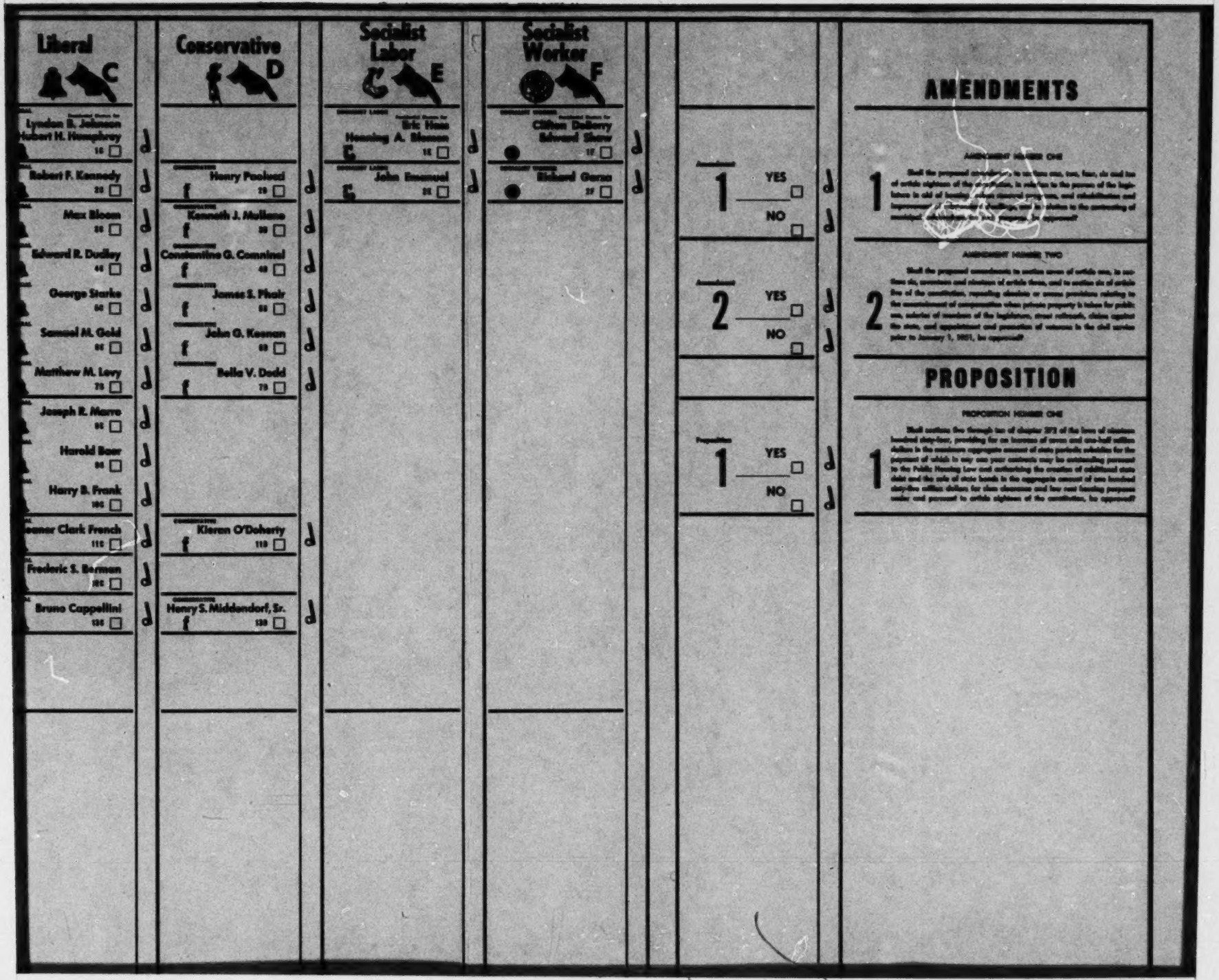
A FEW WORDS OF EXPLANATION

No votes are registered until you pull the curtain lever to the left to open the curtain. You can therefore make as many changes in your ballot as you wish while the curtain lever is at its extreme right (curtain closed).

Each candidate's voting pointer is to the right of his name.

The machine is so arranged that you cannot turn down more than the proper number of pointers for an office. For example, if only one candidate is to be elected for any office you can turn down only one pointer for that office. If more than one candidate is to be elected to an office you can turn down only the number of pointers for the number of candidates to be elected. No vote will be registered for any candidate except that with a pointer left down over his name. So be sure to leave the pointer down over the name you wish to vote for, with the ☒ showing, thus:

		Republican A	Democratic B	Liberal C	Conservative D	Socialist Labor
1	ELECTORS OF PRESIDENT AND VICE-PRESIDENT Vote once	Barry M. Goldwater William E. Miller 1A ☐	Lyndon B. Johnson Hubert H. Humphrey 1B ☐	Lyndon B. Johnson Hubert H. Humphrey 1C ☐		
2	UNITED STATES SENATOR Vote for one	Kenneth B. Keating 2A ☐	Robert F. Kennedy 2B ☐	Robert F. Kennedy 2C ☐	Henry Paolucci 2D ☐	
3	JUSTICES OF THE SUPREME COURT 1st JUDICIAL DISTRICT Vote for five	Abraham D. Levy 3A ☐	Charles G. Tierney 3B ☐	Max Bloom 3C ☐	Kenneth J. Mullane 3D ☐	
4		Nicholas Tsoucalas 4A ☐	Edward R. Dudley 4B ☐	Edward R. Dudley 4C ☐	Constantine G. Comninel 4D ☐	
5		George Starke 5A ☐	Darwin W. Telesford 5B ☐	George Starke 5C ☐	James S. Phair 5D ☐	
6		Samuel M. Gold 6A ☐	Samuel M. Gold 6B ☐	Samuel M. Gold 6C ☐	John G. Keenan 6D ☐	
7		Matthew M. Levy 7A ☐	Matthew M. Levy 7B ☐	Matthew M. Levy 7C ☐	Bella V. Dodd 7D ☐	
8	JUDGES OF THE CIVIL COURT OF THE CITY OF NEW YORK Vote for three	Frank Gioeli 8A ☐	Joseph R. Marro 8B ☐	Joseph R. Marro 8C ☐		
9		Harold Baer 9A ☐	Harold Baer 9B ☐	Harold Baer 9C ☐		
10		Harry B. Frank 10A ☐	Harry B. Frank 10B ☐	Harry B. Frank 10C ☐		
11	REPRESENTATIVE in CONGRESS 17th DISTRICT Vote for one	John V. Lindsay 11A ☐	Eleanor Clark French 11B ☐	Eleanor Clark French 11C ☐	Kieran O'Doherty 11D ☐	
12	STATE SENATOR 20th DISTRICT Vote for one	MacNeil Mitchell 12A ☐	Frederic S. Berman 12B ☐	Frederic S. Berman 12C ☐		
13	MEMBER OF ASSEMBLY 8th DISTRICT Vote for one	John M. Burns 13A ☐	Bruno Cappellini 13B ☐	Bruno Cappellini 13C ☐	Henry S. Middendorf, Sr. 13D ☐	



Liberal C

Lyndon B. Johnson
Hubert H. Humphrey
10

Robert F. Kennedy
20

Max Bloom
30

Edward R. Dudley
40

George Starke
50

Samuel M. Gold
60

Matthew M. Levy
70

Joseph R. Marro
80

Harold Baer
90

Harry B. Frank
100

Leonor Clark French
110

Frederic S. Berman
120

Bruno Cappellini
130

Conservative D

Henry Paolucci
f 20

Kenneth J. Mullane
f 30

Constantine G. Comninel
f 40

James S. Phair
f 50

John G. Keenan
f 60

Bella V. Dodd
f 70

Kieran O'Doherty
f 110

Henry S. Middendorf, Sr.
f 120

Socialist Labor E

Eric Hass
Henning A. Blomen
10

John Emanuel
20

Socialist Worker F

Clifton DeBerry
Edward Shaw
10

Richard Gerso
20

Amendment 1 YES NO

Amendment 2 YES NO

Proposition 1 YES NO

AMENDMENTS

AMENDMENT NUMBER ONE

1 Shall the proposed amendment, to add two new sections, to be sections one and two of article eighteen of the constitution, in relation to the powers of the legislature to aid of housing, urban renewal, projects, and rehabilitation and improvement of substandard dwellings, and in relation to the contracting of municipal indebtedness for such purposes, be approved?

AMENDMENT NUMBER TWO

2 Shall the proposed amendments to section seven of article one, to section six, seventeen and nineteen of article three, and to section six of article five of the constitution, repealing obsolete or unwise provisions relating to the ascertainment of compensation when private property is taken for public use, salaries of members of the legislature, street railroads, claims against the state, and appointment and promotion of veterans in the civil service prior to January 1, 1951, be approved?

PROPOSITION

PROPOSITION NUMBER ONE

1 Shall sections five through ten of chapter 372 of the laws of nineteen hundred sixty-four, providing for an increase of seven and one-half million dollars in the maximum aggregate amount of state periodic subsidies for the payment of which in any one year contracts may be outstanding pursuant to the Public Housing Law and authorizing the creation of additional state debt and the sale of state bonds in the aggregate amount of one hundred sixty-five million dollars for slum clearance and low rent housing purposes under and pursuant to article eighteen of the constitution, be approved?

DIRECTIONS FOR VOTING ON THE VOTING MACHINE

PULL the red handle of the curtain lever three inches left side of the machine from the left to right on list as it will go and leave it there (this will close the curtain around you and unlock the machine for voting).

On the ballot shown at the right you will find the columns A, column B, column C, etc.) the names of the candidates. Turn down the pointer at the right of the candidate or candidates you wish to vote for until an ☒ mark appears at the right of each candidate's name for whom you intend to vote, and leave the ☒ mark showing, thus

Leaving the pointer or pointers down in their voting position, pull the red handle of the curtain lever to the left as far as it will go and leave it there (this will register your vote and return the pointers to their first position, after which the curtain will open).

A FEW WORDS OF EXPLANATION

No vote can be registered until you pull the curtain lever to the left to open the curtain. You can therefore make as many changes in your ballot as you wish while the curtain lever is at its extreme right (curtain closed).

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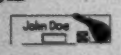
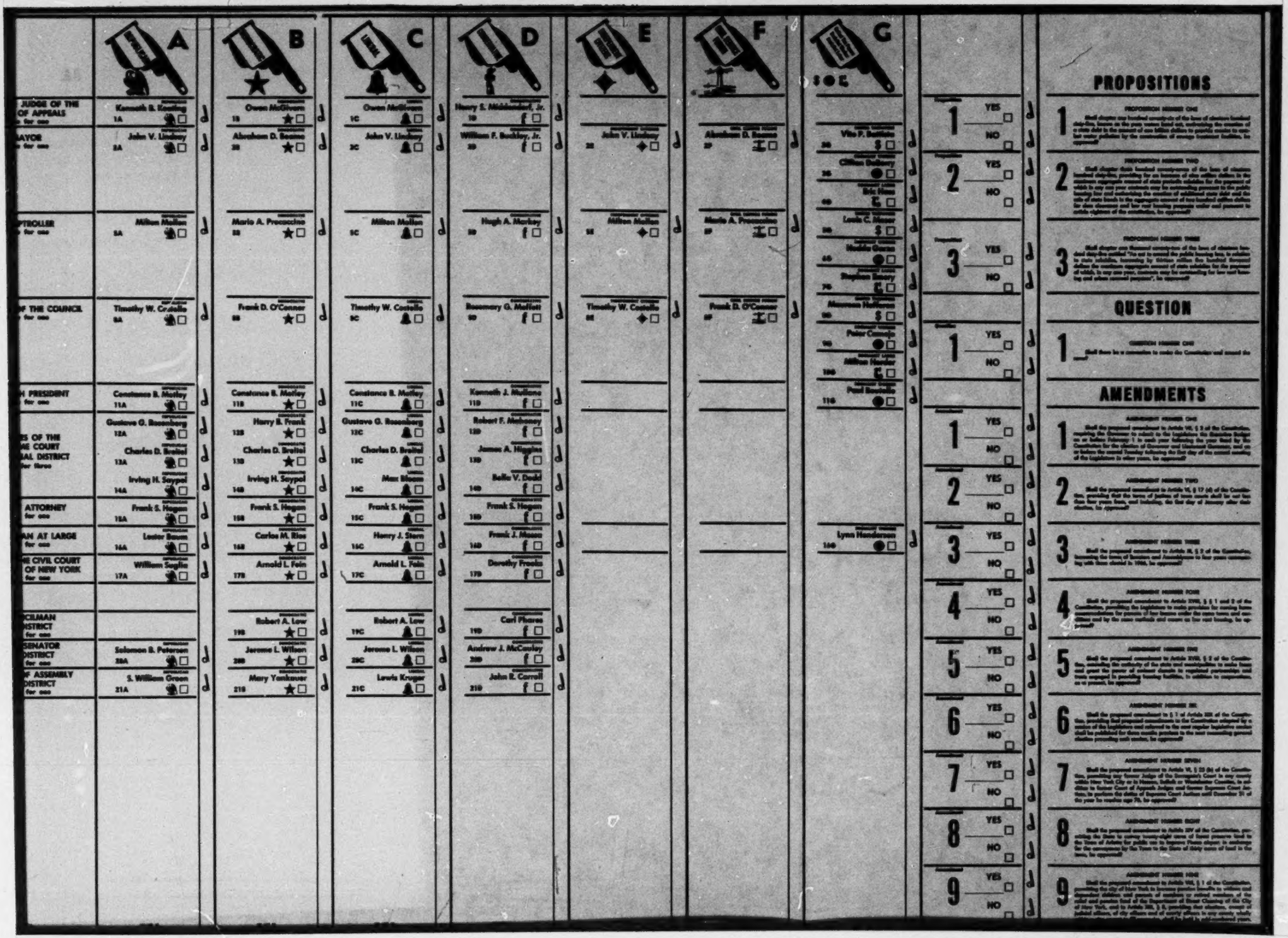


There is no danger of anyone knowing how you vote, as the movement of the curtain lever to the left returns the voted pointer up to its unvoted position before the curtain begins to open.

←

		A	B	C	D	E	F
1	ASSOCIATE JUDGE OF THE COURT OF APPEALS Vote for one	Kenneth B. Keating 1A ☐	Owen McGivern 1B ☐	Owen McGivern 1C ☐	Henry S. Middendorf, Jr. 1D ☐		
2	MAYOR Vote for one	John V. Lindsay 2A ☐	Abraham D. Beame 2B ☐	John V. Lindsay 2C ☐	William F. Buckley, Jr. 2D ☐	John V. Lindsay 2E ☐	Abraham D. Beame 2F ☐
3							
4							
5	COMPTROLLER Vote for one	Milton Mollen 5A ☐	Mario A. Procaccino 5B ☐	Milton Mollen 5C ☐	Hugh A. Morkay 5D ☐	Milton Mollen 5E ☐	Mario A. Procaccino 5F ☐
6							
7							
8	PRESIDENT OF THE COUNCIL Vote for one	Timothy W. Costello 8A ☐	Frank D. O'Connor 8B ☐	Timothy W. Costello 8C ☐	Rosemary G. Moffat 8D ☐	Timothy W. Costello 8E ☐	Frank D. O'Connor 8F ☐
9							
10							
11	BOROUGH PRESIDENT Vote for one	Constance B. Motley 11A ☐	Constance B. Motley 11B ☐	Constance B. Motley 11C ☐	Kenneth J. McKane 11D ☐		
12	JUSTICES OF THE SUPREME COURT 1st JUDICIAL DISTRICT Vote for three	Gustave G. Rosenberg 12A ☐	Henry E. Frank 12B ☐	Gustave G. Rosenberg 12C ☐	Robert F. Mahoney 12D ☐		
13		Charles D. Breitel 13A ☐	Charles D. Breitel 13B ☐	Charles D. Breitel 13C ☐	James A. Higgins 13D ☐		
14		Irving H. Saypol 14A ☐	Irving H. Saypol 14B ☐	Max Blum 14C ☐	Bella V. Dodd 14D ☐		
15	DISTRICT ATTORNEY Vote for one	Frank S. Hogan 15A ☐	Frank S. Hogan 15B ☐	Frank S. Hogan 15C ☐	Frank S. Hogan 15D ☐		
16	COUNCILMAN AT LARGE Vote for one	Lester Beam 16A ☐	Carlos M. Rios 16B ☐	Henry J. Stern 16C ☐	Frank J. Manno 16D ☐		
17	JUDGE OF THE CIVIL COURT OF THE CITY OF NEW YORK Vote for one	William Supkis 17A ☐	Arnold L. Fein 17B ☐	Arnold L. Fein 17C ☐	Dorothy Frooks 17D ☐		
18							
19	COUNCILMAN 6th DISTRICT Vote for one		Robert A. Low 19B ☐	Robert A. Low 19C ☐	Carl Pheres 19D ☐		
20	STATE SENATOR 30th DISTRICT Vote for one	Solomon B. Peterson 20A ☐	Jerome L. Wilson 20B ☐	Jerome L. Wilson 20C ☐	Andrew J. McCauley 20D ☐		
21	MEMBER OF ASSEMBLY 72nd DISTRICT Vote for one	S. William Green 21A ☐	Mary Yankauer 21B ☐	Lewis Kruger 21C ☐	John R. Carroll 21D ☐		


A
B
C
D
E
F
G
JUDGE OF THE OF APPEALS for one
Kenneth B. Keating 1A
John V. Lindsay 2A
Owen McGivern 1B
Abraham D. Beame 2B
Owen McGivern 1C
John V. Lindsay 2C
Henry S. Middendorf, Jr. 1D
William F. Buckley, Jr. 2D
John V. Lindsay 2E
Abraham D. Beame 2F
Vito P. Battista 3G
Clifton Delberry 4G
Eric Hass 5G
Louis C. Messer 6G
Nadine Gracia 7G
Stephen Emery 8G
Maureen Hoffmann 9G
Peter Cannella 10G
Milton Mollen 1A
Mario A. Procaccino 3B
Milton Mollen 3C
Hugh A. Markey 3D
Milton Mollen 3E
Mario A. Procaccino 3F
Frank D. O'Connor 4B
Timothy W. Costello 4C
Rosemary G. Mellett 4D
Timothy W. Costello 4E
Frank D. O'Connor 4F
Paul Bandello 11G
PRESIDENT for one
Constance B. Motley 11A
Constance B. Motley 11B
Constance B. Motley 11C
Kenneth J. Mullane 11D
Gustave G. Rosenberg 12A
Charles D. Breitel 13A
Irving H. Saypol 14A
Harry B. Frank 12B
Charles D. Breitel 13B
Irving H. Saypol 14B
Gustave G. Rosenberg 12C
Charles D. Breitel 13C
Max Steuer 14C
Robert F. Mahoney 12D
James A. Higgins 13D
Bella V. Dodd 14D
ATTORNEY for one
Frank S. Hogan 15A
Frank S. Hogan 15B
Frank S. Hogan 15C
Frank S. Hogan 15D
AN AT LARGE for one
Lester Baum 16A
Carlos M. Rios 16B
Henry J. Stern 16C
Frank J. Mosca 16D
Lynn Henderson 16G
CIVIL COURT OF NEW YORK for one
William Suglia 17A
Arnold L. Fein 17B
Arnold L. Fein 17C
Dorothy Frooks 17D
CILMAN STRICT for one
Robert A. Low 19B
Robert A. Low 19C
Carl Pfores 19D
SENATOR DISTRICT for one
Solomon B. Peterson 20A
Jerome L. Wilson 20B
Jerome L. Wilson 20C
Andrew J. McCooley 20D
F ASSEMBLY DISTRICT for one
S. William Green 21A
Mary Yonkauer 21B
Lewis Kruger 21C
John E. Carroll 21D
1 YES NO
2 YES NO
3 YES NO
1 YES NO
1 YES NO
2 YES NO
3 YES NO
4 YES NO
5 YES NO
6 YES NO
7 YES NO
8 YES NO
9 YES NO
PROPOSITIONS
1
2
3
QUESTION
1
AMENDMENTS
1
2
3
4
5
6
7
8
9

Appendix C.

1943—Test 1

NEW YORK STATE REGENTS LITERACY TEST
(To be filled in by the candidate in ink)

Write your name here .....
First name Middle initial Last name

Write your address here .....

Write the date here .....
Month Day Year

Read this and then write the answers to the questions
Read it as many times as you need to

The legislative branch of the National Government is called the Congress of the United States. Congress makes the laws of the Nation. Congress is composed of two houses. The upper house is called the Senate and its members are called Senators. There are 96 Senators in the upper house, two from each State. Each United States Senator is elected for a term of six years. The lower house of Congress is known as the House of Representatives. The number of Representatives from each state is determined by the population of that state. At present there are 435 members of the House of Representatives. Each Representative is elected for a term of two years. Congress meets in the Capitol at Washington.

Appendix C

The answers to the following questions are to be taken from the above paragraph

1 How many houses are there in Congress? .....

2 What does Congress do? .....

3 What is the lower house of Congress called? .....

4 How many members are there in the lower house? .....

5 How long is the term of office of a United States Senator? .....

6 How many Senators are there from each state? .....

7 For how long a period are members of the House of Representatives elected? .....

8 In what city does Congress meet? .....